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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION
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15 RAYMOND WRIGHT,) CV 12-5905-SH
16 Petitioner,)
17 v.) MEMORANDUM AND ORDER
18 J.N. KATAVICH,) DISMISSING 28 U.S.C. § 2254
19 Respondent.) PETITION FOR WRIT OF
20) HABEAS CORPUS
_____)

21 **I. BACKGROUND**

22 **A. Conviction and Direct Appeal**

23 On September 16, 2011, in Los Angeles County Superior Court case number
24 BA379739, petitioner pleaded no contest to one count of possession of cocaine base
25 for sale. (Cal. Health & Saf. Code § 11351.5). The trial court found true two prior
26 convictions within the meaning of California's Three Strikes Law (Cal. Penal Code
27 §§ 1170.12(a)-(d); 667 (b)-(I)), and one prior conviction alleged pursuant to
28 California Health and Safety Code § 11370.2(a). Petitioner was sentenced to six

1 years in state prison.

2 On October 18, 2011, petitioner appealed his conviction in the California
3 Court of Appeal. That court affirmed his conviction, but modified his presentence
4 custody credit. Petitioner did not file a Petition for Review in the California
5 Supreme Court.

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7 **B. State Habeas Corpus and Mandate Petitions**

8 On October 7, 2011, petitioner filed a Petition for Writ of Habeas Corpus in
9 the California Court of Appeal. That Petition was denied on October 18, 2011.

10 On December 12, 2011, petitioner filed a Petition for Writ of Habeas corpus
11 in the California Supreme Court. That Petition was denied on March 21, 2012.

12 On February 15, 2012, petitioner filed a Petition for Writ of Mandate in the
13 California Court of Appeal. That Petition was denied on June 19, 2012.

14 On June 27, 2012, petitioner filed a Petition for Review of the California
15 Court of Appeal's denial of his Petition for Writ of Mandate in the California
16 Supreme Court. That Petition was denied on August 8, 2012.

17 On September 18, 2012, petitioner filed a Petition for Writ of Habeas Corpus
18 in the California Court of Appeal. That Petition was denied on September 25, 2012.

19 **C. Instant Habeas Corpus Petition**

20 The instant §2254 Petition was filed on July 9, 2012. Respondent filed an
21 initial Return to the Petition on August 28, 2012, arguing that this Court should
22 abstain from considering the merits of the claims alleged in the Petition because of
23 ongoing state court proceedings. On September 27, 2012, the Court found that the
24 state court proceedings had concluded, and therefore abstention was no longer
25 appropriate. This Court further found that Ground Three of the Petition was
26 unexhausted. Petitioner subsequently elected to withdraw Ground Three, and this
27 Court ordered respondent to respond to the merits of Grounds One and Two. The
28 parties have consented to the jurisdiction of the Magistrate Judge. Respondent filed

1 a Supplemental Return on February 15, 2013, and petitioner filed a Reply on March
2 5, 2013.

3 **II. PETITIONER'S CONTENTIONS**

- 4 1. Petitioner's right to due process was violated because prior strike
5 allegations made pursuant to California's Three Strikes Law (Cal.
6 Penal Code §§667(b)-(I), 1170.12(a)-(d)) were not properly pled and
7 proven and did not constitute strikes within the meaning of California
8 law when they were committed. (Pet. at 5; Addendum to Pet. At 1-3;
9 Exhibits.)
- 10 2. Petitioner's right to be free from cruel and unusual punishment was
11 violated by the enhancement of his sentence with the prior convictions.
12 (Pet. at 5.)

13 **III. STANDARD OF REVIEW**

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15 Petitioner's claims were all summarily denied on habeas corpus review by the
16 California Supreme Court (LD 13-14). See Harrington v. Richter, 131 S. Ct. 770,
17 784, 178 L.Ed. 2d 624 (2011) (State court's summary denial of a claim constitutes
18 a denial on the merits for purposes of § 2254(d)); see also In re Reno, 55 Cal. 4th
19 428, 447, 146 Cal. Rptr. 3d 297 (2012) (summary habeas denial reflects rejection
20 of those claims in federal court is unavailable unless the state-court decisions were
21 objectively unreasonable.

22 A federal court may review a habeas petition by a person in custody under a
23 state court judgment "only on the ground that he is in custody in violation of the
24 Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). Federal
25 habeas relief is not available for state law errors. Swarthout v. Cook, __ U.S. __, 131
26 S. Ct. 859, 861, 178 L. Ed. 2d 732 (2011)(per curiam)(citing Estelle v. McGuire,
27 502 U.S. 62, 67, 112 S. Ct. 475, 116 L. Ed. 2d 385 (1991)).

28 Under the Antiterrorism and Effective Death Penalty Act of 1996

1 (“AEDPA”), a federal court may not grant habeas relief on a claim adjudicated on
 2 its merits in state court unless the adjudication:

- 3 (1) resulted in a decision that was contrary to, or involved an unreasonable
 4 application of, clearly established Federal law, as determined by the
 5 Supreme Court of the United States; or
- 6 (2) resulted in a decision that was based on an unreasonable determination
 7 of the facts in light of the evidence presented in the State court
 8 proceeding.

9 28 U.S.C. § 2254(d).

10 “Clearly established federal law” means federal law that is clearly defined by
 11 the holdings of the Supreme Court at the time of the state court decision. See, e.g.,
 12 Cullen v. Pinholster, __ U.S. __, 131 S. Ct. 1388, 1399, 179 L. Ed. 2d 557
 13 (2011)(citation omitted). Although only Supreme Court law is binding, “circuit
 14 court precedent may be persuasive in determining what law is clearly established
 15 and whether a state court applied that law unreasonably.” Stanley v. Cullen, 633
 16 F.3d 852, 859 (9th Cir. 2011)(citation omitted).

17 In determining whether a decision is “contrary to” clearly established federal
 18 law, a reviewing court must evaluate whether the decision “‘applies a rule that
 19 contradicts [such] law’” and how the decision “confronts [the] set of facts that were
 20 before the state court.”” Cullen v. Pinholster, 131 S. Ct. at 1399 (quoting Williams
 21 v. Taylor, 529 U.S. 362, 405-06, 120 S.Ct. 1495, 146 L. Ed. 2d 389 (2000)). If the
 22 state decision “‘identifies the correct governing legal principle’ in existence at the
 23 time,” a reviewing court must assess whether the decision “‘unreasonably applies
 24 that principle to the facts of the prisoner’s case.’” Id. (quoting Williams, 529 U.S.
 25 at 413). An “unreasonable application” of law is “‘different from an incorrect
 26 application’” of that law. Harrington v. Richter, __ U.S. __, 131 S. Ct. 770, 785,
 27 178 L. Ed. 2d 624 (2011)(quoting Williams, 529 U.S. at 410). Similarly, a state-
 28 court decision based upon a factual determination may not be overturned on habeas

1 review unless the factual determination is “‘objectively unreasonable in light of the
2 evidence presented in the state-court proceeding.’” Stanley, 633 F.3d at 859
3 (quoting Davis v. Woodford, 384 F.3d 628, 638 (9th Cir. 2004)).

4 The AEDPA standard requires a high level of deference to state court
5 decisions, such that a state decision that a claim lacks merit precludes federal habeas
6 relief so long as “‘fairminded jurists could disagree’ on the correctness of the state
7 court’s decision.” Harrington v. Richter, 131 S. Ct. at 786 (quoting Yarborough v.
8 Alvarado, 541 U.S. 652, 664, 124 S. Ct. 2140, 158 L. Ed. 2d 938 (2004)).
9 Accordingly, to obtain federal habeas relief a state prisoner must show that the state
10 court’s decision on a federal claim was “so lacking in justification that there was an
11 error well understood and comprehended in existing law beyond any possibility for
12 fairminded disagreement.” Id. at 786-87. Moreover, even if this court finds such
13 a state-court error of clear constitutional magnitude, habeas relief is not available
14 unless the error “had substantial and injurious effect or influence in determining the
15 jury’s verdict.” Fry v. Pliler, 551 U.S. 112, 116, 121-22, 127 S. Ct. 2321, 168 L. Ed.
16 2d 16 (2007)(quoting Brecht v. Abrahamson, 507 U.S. 619, 637, 113 S. Ct. 1710,
17 123 L. Ed. 2d 353 (1993)).

18 19 **IV. DISCUSSION**

20 **A. Ground One Is Not Cognizable on Federal Habeas, Nor Did The** 21 **California Supreme Court Unreasonably Apply Clearly** 22 **Established Federal law When It Denied Petitioner’s Claim**

23 In Ground One, petitioner argues that his right to due process was violated
24 because prior strike allegations arising out of Florida convictions, findings made
25 pursuant to California’s Three Strikes Law (Cal. Penal Code §667(b)-(I),
26 1170.12(a)-(d)), were not properly pled and proven and did not constitute strikes
27 within the meaning of California law when they were committed. First, Ground one
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1 is a state law claim and thus not cognizable on federal habeas. Second, as the
 2 California Supreme Court did not unreasonably apply United States Supreme Court
 3 precedent when it denied this claim, AEDPA precludes relief.

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 5 **B. Petitioner’s Claim of State Sentencing Error Is Not Cognizable**
 6 **on Federal Habeas and Moreover, the California Supreme**
 7 **Court’s Interpretation of State Sentencing Laws Is Binding**

8 To the extent petitioner raises a claim based on an alleged error of state law,
 9 the claim is not cognizable on federal habeas review. Federal habeas corpus is
 10 available only on behalf of a person in custody in violation of the Constitution or
 11 laws or treaties fo the United States. 28 U.S.C. § 2254(a); Estelle v. McGuire, 502
 12 U.S. 62, 68, 112 S.Ct. 475, 116 L.Ed. 2d 385 (1991); Engle v. Isaac, 456 U.S. 107,
 13 119, 102 S.Ct. 1158, 71 L.Ed. 2d 783 (1982). A violation of state law standing
 14 alone is not cognizable in federal court on habeas. Park v. California, 202 F.3d 1146,
 15 1149 (9th Cir. 2000); Jammal v. Van de Kamp, 926 F.2d 918, 919 (9th Cir. 1991);
 16 see also Dugger v. Adams, 489 U.S. 401, 409, 109 S.Ct. 1211, 103 L.Ed. 2d 435
 17 (1989).

18 Absent fundamental unfairness, federal habeas relief is not available for a
 19 state court’s misapplication of its own sentencing laws. See Christian v. Rhode, 41
 20 F.3d 461, 469 (9th Cir. 1994) (holding that petitioner was not entitled to habeas
 21 relief on claim that state court improperly used petitioner’s prior federal offense to
 22 enhance punishment); Miller v. Vasquez, 868 F.2d 1116, 1118-19 (9th Cir. 1989)
 23 (holding that claim that prior conviction was not a “serious felony” under
 24 California’s sentencing law is not cognizable in federal habeas proceeding); Moore
 25 v. Chrones, 687 F.Supp. 2d 1005, 1039-41 (C.D. Cal. 2010) (claim of trial court
 26 error by declining to exercise its discretion to strike a prior “strike” conviction
 27 involves solely the interpretation and application of state sentencing law, and thus
 28 does not present a basis for federal habeas relief). Thus petitioner’s claim that his

1 Florida convictions did not qualify as “strikes” under California’s Three Strikes Law
2 is not cognizable on federal habeas.

3 Moreover, federal courts are bound to follow the decisions of the state’s
4 highest court on state law matters. Bradshaw v. Richey, 546 U.S. 74, 76, 126 S.Ct.
5 602, 163 L.Ed. 2d 407 (2005) (per curiam); see also Mendez v. Small, 298 F.3d
6 1154, 1158 (9th Cir. 2002) (“A state court has the last word on the interpretation of
7 state law”); Woratzeck v. Stewart, 97 F.3d 329, 336 (9th Cir. 1996) (State Court
8 presumed to properly apply state law). Therefore, the California Supreme Court’s
9 rejection of his state sentencing claim is binding.

10
11 **C. Even If Petitioner’s Claim of State Sentencing Error Were**
12 **Subject to Federal Habeas Review, It Is without Merit**

13 Petitioner’s claim alternatively fails on the merits. The crux of petitioner’s
14 argument is that his convictions for robbery in Florida should not have counted as
15 strikes in California because 1) the Florida and California statutes for robbery were
16 not sufficiently similar and 2) the Florida convictions were not properly pled and
17 proven. (Pet. at 5; Addendum to Pet. at 1-3; Exhibits.) However, as the trial court
18 found:

19 In People’s 2, Mr. Wright pled to a violation of Florida revised statute §
20 812.13, which is a robbery and the element of that robbery essentially tracks the
21 language of California Penal Code § 211. So that is clearly a robbery. The elements
22 clearly establish a robbery under California law.

23 Similarly in People’s 3, it appears that Mr. Wright entered a plea of guilty to
24 a violation of Florida revised statute 812.13. That is also a dash one on page 1 of
25 16. However, it does not appear from reviewing the record that there was a plea to
26 812.131. I don’t know what the dash one means.

27
28 Moreover, I have read and reviewed the declaration under penalty of perjury,

1 the fact that the first page which does establish the elements of a robbery under
2 California law. Moreover the factual summary contained in the criminal record also
3 indicates the elements of a robbery under California law. Moreover, finally the first
4 page of Exhibit 3 indicates that it was a violation of Florida statute § 812.13.

5 So based on all of that, I find beyond a reasonable doubt that the priors
6 alleged under California's Three Strikes Law are true, have been proven beyond a
7 reasonable doubt, and I do find them to be true.

8 (2RT at H27-H28.)

9 As the trial court noted, the definitions of robbery in Florida and California
10 were sufficiently similar for petitioner's convictions in Florida to qualify as "strikes"
11 under California's Three Strikes Law. In 1990, Florida defined robbery as "the
12 taking of money or other property which may be the subject of larceny from the
13 person or custody of another when in the course of the taking there is the use of
14 force, violence, assault, or putting in fear." Fla. Stat. Ann. §812.13 (West 1990).
15 California defines robbery as "the felonious taking of personal property in the
16 possession of another, from his person or immediate presence, and against his will,
17 accomplished by means of force or fear." Cal. Penal Code §211. Because petitioner
18 pleaded guilty to Florida statutes § 812.13 in 1986 and 1990, the trial court correctly
19 found that petitioner's convictions for robbery qualified as strikes in California. See
20 Cal. Penal Code § 1192.7(c)(19) (listing robbery as a strike).

21 Furthermore, petitioner's contention that the prior convictions were not
22 properly documented fails. In determining the substance of a prior conviction, the
23 trier of fact may look to the entire record of conviction. People v. Guerrero, 44 Cal.
24 Cal. 3d 343, 355, 243 Cal. Rptr. 688 (1988). The record of conviction may consist
25 of the preliminary hearing transcripts, (People v. Reed, 13 Cal. 4th 217, 223-30,
26 52 Cal. Rptr. 2d 106 (1996)); the Information and verdict forms (People v. Skeirik,
27 229 Cal. App. 3d 444, 462, 280 Cal. Rptr. 175 (1991)); abstracts of judgment People
28 v. Johnson, 208 Cal. App. 3d 19, 26, 256 Cal. Rptr. 16 (1989)); minute orders

1 (People v. Harrell, 207 Cal. App. 3d 1439, 1444-45, 255 Cal. Rptr. 750 (1989));
2 change of plea forms (People v. Carr, 204 Cal. App. 3d 774, 778, 251 Cal. Rptr. 458
3 (1988));and certain statements in the probation reports (People v. Garcia, 216 Cal.
4 App. 3d 233, 237, 264 Cal.Rptr. 662 (1989)).

5 Here, the trial court reviewed documents from each conviction including
6 arrest and booking reports, signed guilty plea forms, an Information (for the 1986
7 conviction only), and abstracts of judgment (including fingerprint expert that the
8 fingerprints in the exemplars belonged to petitioner. (2RT at H23-H25.) Thus, the
9 trial court had sufficient evidence to determine that petitioner had been convicted
10 of robbery in Florida in 1986 and 1990. Therefore, the California Supreme Court's
11 rejection of this claim was reasonable, and the AEDPA precludes relief.

12
13 **D. The California Supreme Court Did Not Unreasonably Apply**
14 **Clearly Established Federal Law When It Rejected Petitioner's**
15 **Claim That His Sentence Constituted Cruel and Unusual**
16 **Punishment in Ground Two**

17 In Ground Two, petitioner argues that his six-year sentence violates the
18 proscription against cruel and unusual punishment. Specifically, petitioner contends
19 that his sentence was cruel and unusual because it was enhanced pursuant to
20 California's Three Strikes law. Because the California Supreme Court did not
21 unreasonably apply clearly established federal law in denying this claim, AEDPA
22 precludes relief.

23
24 **1. The Applicable Law**

25 The Eighth Amendment to the United States Constitution bars cruel and
26 unusual punishment and applies equally to capital and noncapital sentences. Ewing
27 v. California, 538 U.S. 11, 20, 123 S.Ct. 1179, 155 L.Ed 2d 108 (2003). This
28 constitutional principle "forbids only extreme sentences that are 'grossly

1 disproportionate' to the crime." Id. At 23. In a noncapital case, successful
2 proportionality challenges are "exceedingly rare." Id. At 20-21 (sentence of twenty-
3 five years to life in prison for felony theft of golf clubs under California's Three
4 Strikes law, with prior felonies of robbery and burglary, did not violate federal
5 prohibition on cruel and unusual punishment).

6
7 **2. Petitioner's Six-year Sentence Does not Violate the Proscription**
8 **Against Cruel and Unusual Punishment**

9 Here, petitioner received the low term of three years for possession of cocaine
10 based for sale (Cal. Health & Saf. Code §11351.5). Although the trial court found
11 that petitioner had two prior strikes, it dismissed one in the interests of justice. The
12 trial court then doubled petitioner's three-year sentence pursuant to California's
13 Three Strikes Law. Under the plea agreement, petitioner received a sentence of six
14 years in state prison.

15 Petitioner's second strike sentence did not violate the Eighth Amendment
16 because petitioner had an extensive criminal history dating back to his youth,
17 including felony convictions for robbery, dealing in stolen property, marijuana,
18 trafficking, and sale of a controlled substance. (Sealed Probation Report at 387-91.)
19 Based on petitioner's recidivism, it was not cruel and unusual punishment to double
20 his three-year sentence pursuant to California's Three Strikes Law.

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28 **CONCLUSION**

1 ACCORDINGLY, The Petition for Writ of Habeas Corpus is denied and
2 dismissed with prejudice.

3 DATED: March 19, 2013

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7 A handwritten signature in cursive script, reading "Stephen J. Hillman", is written over a horizontal line. The signature is dark and fluid, with a prominent initial 'S' and 'H'.
8 STEPHEN J. HILLMAN

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28 UNITED STATES MAGISTRATE JUDGE